



Real Estate Bulletin

DEPARTMENT OF REAL ESTATE

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P.6 Originating Nontraditional Mortgage Loan Products | P.7 Succession Planning



**Real Estate Commissioner
Douglas R. McCauley**

Commissioner's Update

“Broker supervision” is a foundational requirement that is an invaluable tool in ensuring consumer protection. It is the phrase most often used when describing the broker’s responsibilities for supervising the activities of the broker’s affiliated salespersons and broker-associates and monitoring their real estate-related activities.

In California, salespersons and brokers acting in the capacity of a salesperson to another broker must affiliate with a broker when engaging in “licensed” real estate activities. Also, brokers who have affiliated salespersons and/or broker-associates must supervise them.

These requirements maximize protections for real estate consumers against fraud, misrepresentation, and negligence. Broker supervision is defined in California Real Estate Law at Business & Professions (B&P) Code sections [10159.2](#) and [10177\(h\)](#), and in the [California Code of Regulations at Title 10, Chapter 6, Section 2725](#).

A licensed real estate broker must supervise the real estate licensees who are affiliated with the broker. A broker’s failure to provide adequate supervision can lead to disastrous consequences not only for the affected consumers but also for the broker’s future as a real estate licensee.

In exercising reasonable supervision over the activities of their affiliated licensees, [Regulation 2725](#) requires that brokers establish policies, rules, procedures, and systems to review, oversee, inspect, and manage:

(CONTINUED ON PAGE 3)

New Pre-License Statutory Course Requirements Coming in January 2024

As highlighted in the recent Winter and Spring editions of Real Estate Bulletin, [Senate Bill \(SB\) 1495](#) requires completion of a revised real estate practice course by all applicants who submit an application to take the salesperson or broker examination on or after January 1, 2024.

New compliant real estate practice courses are now available and can be completed by applicants through one of DRE’s approved course providers or at one of the accredited California colleges or universities. *

The revised course must include the following components:

- A component on implicit bias, including education regarding the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases, and actionable steps students can take to recognize and address their own implicit biases.
- A component on federal and state fair housing laws as those laws apply to the practice of real estate. The fair housing component shall include an interactive participatory component, during which the applicant shall role play as both a consumer and a real estate professional.

Find a list of [Frequently Asked Questions](#) on DRE’s website.

**Please confirm with the institution providing the course that it is SB 1495 compliant. To search for DRE approved CE courses, visit the course search page available on our website at <https://secure.dre.ca.gov/publicasp/cecontinue.asp>. ■*

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COMMISSIONER’S UPDATE (CONTINUED FROM PAGE 1)

1. Transactions requiring a real estate license;
2. Documents that may have a material effect upon the rights or obligations of a party to the transaction;
3. Filing, storage, and maintenance of such documents;
4. Handling of trust funds;
5. Advertising of any service for which a license is required;
6. Familiarizing affiliated licensees with the requirements of federal and state laws relating to the prohibitions against discrimination;
7. Regular and consistent reports of licensed activities of affiliated licensees;

A broker also must have systems in place to monitor its overall policies, rules, procedures, and systems. Brokers may use the services of other brokers and salespersons to assist in administering these supervisory policies and procedures, so long as the broker does not relinquish overall responsibility for supervision of the acts of persons licensed to the broker.

The form and extent of such policies, rules, procedures, and systems must take into consideration the number of affiliated licensees and the number and location of branch offices. That specific requirement frames many conversations in the profession, particularly given the rapid evolution of business models.

Since the real estate industry is always changing, it’s imperative that DRE ensure that its standards reflect the current state of the profession, with a firm commitment that our statutory consumer protection mission remains paramount.

DRE is currently engaged in conversations with industry representatives as to how broker supervision is or is not working in the current marketplace. While DRE staff has no preconceived notions as to whether or not our laws need to be modified, we look forward to a robust dialogue to assess the appropriateness of these standards and identify means to strengthen consumer protection. ■

 @DougMcCauleyDRE



WHAT DO YOU KNOW?

A quiz on California Real Estate Law

According to California Real Estate Law, do you know the answers to these questions?

1. Must a licensed person be present at open houses?
2. On a simple sign that says “Open House, 123 Sesame Street,” is a license number required?
3. Can a licensee holding the open house indicate that families with children are discouraged (assuming it is not an approved Senior Housing community)?
4. Can a licensee holding an open house leave the home open for a while, leaving a sign that says “Back in 30 minutes. Feel free to look around”?

The answers are on Page 11. ■

DRE URGING ALL LICENSEES TO BE ON ALERT FOR GROWING VACANT LAND PROPERTY SCAMS

Last fall, DRE issued a statewide [Consumer Alert involving identity theft and rental properties](#). Now, we are urging our more than 430,000 licensees to be on alert for another type of identity theft scam. This one involves a growing number of fraudsters posing as owners of vacant land and contacting real estate agents and requesting their assistance to sell a property they don't actually own.

Law enforcement agencies and District Attorney offices around California report a sharp increase in real estate fraud involving identity theft and the sale of vacant land and unencumbered property.

All real estate agents should exercise due diligence to verify the owner of a property before accepting a listing.

In the scheme, the criminal:

- Searches public records to identify properties that are free of mortgage or other liens and to identify the property owner. This often includes vacant lots, long-term rentals, or vacation rentals, with targeted properties often owned by the elderly and/or foreigners.
- Poses as the property owner and contacts a real estate agent to list the targeted property for sale.
- Requests that the property be listed below market value to generate immediate interest.
- Requests that no "For Sale" sign be posted on the property.
- Requests preference for a cash buyer, quickly accepts an offer, and demands a quick closing.
- Refuses to meet in person, preferring to be contacted through email, text, or over phone, and typically refusing video calls.
- Refuses to attend the signing and claims to be out of state or country.
- Demands to use their own notary, who then provides falsified documents to the title company or closing attorney.
- Insists that proceeds are wired to them.

On their own, these characteristics may not be red flags. But, when several or most apply, the risk becomes more apparent. Unfortunately, the scheme is usually only discovered when recording the transfer of documents with the appropriate county.

How to prevent the scam

As a real estate agent, before accepting a listing, you should take steps to establish and verify the identity of a property owner. Some tips to do that include:

- Request an in-person or virtual meeting and see proper government-issued identification.
- If they won't meet, require them to utilize the services of third-party identity verification service provider.
- Conduct an online search with the name of the property owner, looking for a phone number and recent photo. If you find a number, contact that person and verify they are the actual owner.
- Send via overnight mail a copy of the electronically signed listing to the address or record with a request to confirm the listing's accuracy. This will alert the legitimate owner of potential fraud.
- Require that the property owner provide a copy of a voided check with the seller's disbursement authorization form.
- Use a wire verification service or confirm wire instructions match account details on the seller's disbursement authorization form.

DRE also encourages brokers to develop written policies with respect to listing properties in which the licensee and seller have never met in-person.

Alleged cases of this or any other type of real estate fraud should be reported to local law enforcement authorities or local district attorney's office. If there is another real estate licensee potentially involved in the fraud, you should provide the information to DRE through our [Enforcement Online Complaint System](#).

(CONTINUED ON NEXT PAGE)



DRE Warns Licensees to Be Aware of QR Code Scams

You see them everywhere in society now, from restaurants, to on your television. QR Codes can make it quick and easy for you to pull up a website on your mobile phone. But the technology is also making it quicker and easier for hackers to hijack someone’s personal data or other sensitive information. They can also be used to ruin someone’s reputation.

So, DRE is warning all licensees, especially if you use QR Codes for your business, to be aware of what scammers are doing.

One way scammers act is by replacing a legitimate QR Code on your property sign with their own fraudulent code they print out and stick over yours. Or they might stick a QR Code on your sign if there isn’t one already there.

Fraudulent QR Codes can also be programmed to open payment sites, get you to follow social media accounts, or send a pre-written email from your account.

Be sure to keep a close watch on your property signs or other forms of advertising. Regularly check all your QR Codes to make sure they are linking to the right website.

Other Resources

FBI News Release: <https://www.ic3.gov/Media/Y2022/PSA220118>. ■

VACANT LAND PORPerty SCAMS (CONTINUED FROM PAGE 4)

Additional Resources

- [San Luis Obispo County District Attorney’s Office - Press Release](#)
- [California Association of Realtors - Press Release](#)
- [American Land Title Association - Seller Impersonation Fraud Handout](#)
- [State of Oregon Real Estate Agency - Seller Impersonation Fraud Article](#). ■



Originating Nontraditional Mortgage Loan Products Such As Adjustable Rate Mortgage Loans

Depending on which financial or mortgage industry news you follow, in April and May of 2023 the average interest rate nationally for the traditional 30-year fixed rate mortgage was anywhere from 6.91% to 7.24%, with industry prognosticators signaling an expected increase to at or over 8% by year's end.

So, what does that mean for the average borrower looking to buy or refinance a home in 2023? One thing that borrowers look to when mortgage rates increase is alternatives to the traditional 30-year mortgage. The most common nontraditional mortgage loan product borrowers seek is the adjustable rate mortgage or ARM. In the hope of saving on interest and keeping their monthly mortgage payment manageable, borrowers will trade the stability of a fixed interest rate for a low introductory rate ARM, and gamble that when that rate is due to change, the market at that time will favor them with a lower rate, or that they'll be better positioned financially to manage a higher mortgage payment due to an increased interest rate, or to refinance into a fixed rate loan.

It is very important that those who recommend nontraditional loan products have a good understanding of the potential risks and drawbacks, as well as the benefits. When a real estate broker who holds a mortgage loan originator endorsement is recommending such products, the understanding of and the explanation regarding the use of nontraditional loan products occurs within the context of the fiduciary duties owed to the intended borrower.

DRE licensees should use caution when advocating the use of an ARM in a residential loan transaction. Nontraditional loan products are not suitable for everyone, and what starts as a temporary solution to a financing problem may turn out to be a long-term detriment to the borrower. The licensee, as agent and fiduciary, should be prepared to explain the benefits and risks to their client throughout the term of any residential mortgage loan, particularly when it is a nontraditional loan product such as an ARM.

Take as an example a '5/1' ARM, which means that the introductory term is five years and that the interest rate will adjust annually thereafter. As the broker, have you explained to the borrower that after the first five years of the loan the interest rate will change annually, and could increase or decrease each year depending on the market conditions at that time? Have you explained to the borrower what determines how the interest rate will change, that it will be calculated based on the index and margin applicable to the loan the borrower agreed to, along with any rate cap or payment cap, and if a rate or payment cap could lead to negative amortization?



DRE Licensees should use caution when advocating the use of an ARM in a residential loan transaction



Real estate brokers performing mortgage lending activities need to ensure that they're adequately and accurately communicating with their borrowers all loan options available, and the full terms of those loan options, which in the case of ARMs includes the current and future terms of the loan.

For additional information about the broker's responsibilities when performing mortgage lending activities, including the requirements specific to nontraditional mortgage loan products, and when brokers are acting as the lender, brokers should review the [Real Estate Business Resources](#) page on the DRE website. It includes, among others, the following publications: Mortgage Loan Broker Compliance Manual, Guidance on Nontraditional Mortgage Product Risk, and the 2023 Real Estate Law Book. ■



Succession Planning

It's never too early or too late to start your succession planning. While there are multiple aspects of your company that may need planning should you want to retire, such as legal and tax ramifications, there are some considerations that you may wish to take when it comes to your company's real estate license. First, ask yourself the following questions:

- 1) Do my affiliated salespersons and/or broker associates perform licensed activities under my individual broker's license or under a corporate license?
- 2) When do I plan to retire?
- 3) What steps must I take, or consider, before retiring?

For those who keep salespersons and broker associates acting as salespersons, directly under their individual broker's license, each salesperson and broker associate must be changed to affiliate under the new incoming responsible broker to whom they will be affiliated. Depending on when you transfer your business, you may need to consider the length of time for processing salesperson change applications by visiting [DRE's website](#) and navigating to the [Current Processing Timeframes](#) link. To significantly reduce processing time, it is recommended you make sales changes and broker associate notifications through DRE's [eLicensing system](#).

When corporations are the entity that keeps salespersons, generally no changes are needed for affiliated salespersons or broker associates when the designated officer retires or is replaced by another. This only applies, however, when the corporation remains in good standing and is under the control and supervision of a licensed, designated officer at all times. New designated officers must apply by submitting to DRE a [Corporation License Application \(RE 201\)](#), including a corporate resolution, along with payment, if applicable. Again, please take into consideration the length of time for processing corporate license applications.

Some may be pressed to plan for succession beforehand, due to either medical ailments or personal reasons. It's important to note that if you operate under a corporate license, it may be a smoother transition to have additional broker-officers already licensed to your corporation under Business & Professions Code 10158. Additional broker-officers become licensed by filling out a [Corporation License Application \(RE 201\)](#) and submitting it, along with payment, to [DRE headquarters in Sacramento](#) for processing.

This may be smoother in the event time is not on your side. Please note, however, that this does not mean there will be shorter processing times. It simply means someone could step in after submitting a corporate license application to substitute as the designated officer until a permanent designated officer is recruited and whose own corporate license application is submitted and processed.

Under less pleasant circumstances, such as an untimely incapacitation of a designated officer, having an additional broker-officer or another qualified broker may also allow for the corporation to continue operations without interruption, provided the department receives a corporate license application by the new designated officer within ten (10) business days from incapacitation or death.

In all employment and affiliation changes, it is also equally important to comply with Commissioner's Regulation 2726, which requires a broker-salesperson relationship agreement to be dated and signed by all parties—salesperson or broker associate who is retained as a salesperson, and their responsible broker. The agreement must cover all material aspects of the relationship, including but not limited to, supervision of licensed activities, duties, and compensation.

Additional considerations may include the filing of any fictitious business name statements or business licenses as may be required in various municipalities. Seek guidance from the appropriate city or county governmental agencies with jurisdiction in your area who oversee these requirements.

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ENSURE PROTECTION OF TRUST FUNDS COLLECTED BY REAL ESTATE BROKERS

There have been recent public announcements from federal state regulators, including the FDIC (Federal Deposit Insurance Corporation), regarding the failure of at least two banks. DRE is aware of concerns about how client funds can be adequately protected if there are further bank failures or insolvencies.

Real estate brokers who are collecting trust funds as part of a real estate transaction should take measures to ensure that these funds are being deposited into a properly designated trust account. Trust funds collected and held by real estate brokers may occur during a sales transaction or when the broker is acting as a property manager, loan servicer, or a mortgage loan broker, or the broker performs “broker-controlled” escrows.

When read in combination, Business and Professions Code Section 10145(a)(1) and Commissioner’s Regulation 2832(a) require a real estate broker who accepts funds belonging to others to deposit those funds into one of three places, within three business days following receipt of the funds by the broker or by the broker’s salesperson:

- 1) Into a neutral escrow depository;
- 2) Into the hands of the owner of the funds;
- 3) Into a trust fund account maintained by the broker in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee. The account must be in a bank or recognized depository in California.

Real estate brokers collecting trust funds should deposit these funds into a properly designated trust account at a financial institution located in California. A fiduciary trust account adds additional protection with regard to FDIC coverage up to \$250,000 for each beneficiary. Real estate brokers should adhere to the following requirements:

1. The bank account is a fiduciary trust account that has federal insurance coverage for funds held in the account per principal or beneficiary.

- A broker should obtain reassurances, preferably a written statement, from the bank verifying if the account has adequate FDIC coverage per beneficiary.
2. The name of the trust account should be properly designated in the name of the broker as trustee.
 - A broker can obtain a copy of the bank signature card and review the title of the account or can also request a written statement from the bank verifying the title of the bank account. The account should be titled in the broker’s name or the broker’s fictitious business name and the word “trust” should be in the identifying name title of the account.
 3. The broker maintains trust fund accounting records so that the trust funds can be properly accounted for and identified.
 - The link (<https://dre.ca.gov/files/pdf/re13.pdf>) discusses trust fund recordkeeping requirements. The real broker should be familiar with Commissioner Regulations 2831 and 2831.1 and verify if the trust fund accounting records contain all the elements as described in the aforementioned regulation.

If the bank cannot provide an adequate response to Items 1 and 2 above, the trust funds a real estate broker is holding for the benefit of their clients can be at risk. A real estate broker should consider looking for an alternative bank or financial institution to ensure the protection of their clients’ trust funds and also satisfy DRE’s trust fund requirements.

Learn more about the FDIC deposit insurance “Deposit Insurance FAQs” <https://www.fdic.gov/resources/deposit-insurance/faq/index.html> and the “FDIC Information and Support Center” https://ask.fdic.gov/fdicinformationandsupportcenter/s/?language=en_US. ■



The Important Role of Enforcement in Regulating California's Real Estate Industry

DRE is a regulatory agency with a mission of protecting California real estate consumers. It fulfills this obligation through licensure, regulation, education and enforcement of California's Real Estate Law and Subdivided Lands Law.

As for licensure, DRE can deny a license to an applicant if they do not meet the requirements for licensure and discipline a license of a licensee for proven violations of California law. DRE has a number of tools available in its disciplinary tool chest to address a licensee's violations of the Real Estate Law. These tools range from revocation for the more serious violations to public reproof, citation and fine, or corrective action letter for the less serious violations. For the most egregious violations, DRE may issue a Desist and Refrain Order that requires a bad actor to stop their offending activities or a Bar Order that prohibits a bad actor from engaging in certain real estate activities for up to three years.

DRE enforces the Real Estate Law and Subdivided Lands Law to achieve maximum protection for real estate consumers while exercising impartiality and fairness towards both the consumer and the industry. Many of DRE's enforcement actions originate as consumer complaints.

For more information on recent DRE disciplinary actions, DRE posts on its actions on its website at <https://www.dre.ca.gov/Licensees/DisciplinaryActions.html>. ■

Printing Out Your DRE License

Please note that as of July 1, 2023, DRE no longer provides pocket license cards to new or renewing licensees. Licensees can access and print their official license certificate online through their free account on [DRE's eLicensing System](#).

Licensees should use printouts of both their official license certificate and [current license status](#) from DRE's website in situations when they need to provide verification of their license. ■



Industry Help Needed to Develop New License Exams

DRE wants to be sure every real estate licensee has a voice in the development of new salesperson and broker exams. Every five to seven years, DRE updates both exams. Our latest Exam Development Process (EDP) is now underway. Updating our exams ensures they accurately reflect current industry practices. It also substantiates the minimum competency of examinees for licensure and makes both exams legally defensible. But we can't do this without your help.

Two parts of the process are underway right now. First, DRE is continuing to recruit active real estate Licensees as Subject Matter Experts (SMEs) to participate in the process. Also, to help reflect the rich diversity of California, DRE is working to attract SMEs from throughout the state who focus on all areas of real estate practice, and those involved with diverse national, state and local professional real estate groups and associations.

You can participate as little or as much as you would like, and the majority of workshops and meetings are conducted virtually. Additionally, SMEs are provided with continuing education hours and an honorarium for their participation.

The second is to take our California Real Estate Job Analysis Survey. This survey is a chance for every licensee to help make sure both exams reflect current industry practices. DRE recently sent an individual email to every licensee when the online survey opens. You also can click on the link below to go directly to the survey: <https://www.surveymonkey.com/t/2023-California-DRE-Job-Analysis-Survey>.

As an incentive, those who complete the survey can register to receive three hours of consumer service Continuing Education credit to use towards their next license renewal.

If you are interested or want to learn more about being a SME or have questions about the job analysis survey, please drop an email to: ExamAdmin_DevUnit@dre.ca.gov. Be sure to put "Exam SME" or "Job Analysis Survey" in the subject line. ■

SUCCESSION PLANNING (CONTINUED FROM PAGE 7)

In the case of adding or deleting the use of any fictitious business names, keep in mind the requirement to submit the appropriate change form to accomplish these tasks, as well as the adding or deleting of any main office or branch office addresses. The broker or officer may use eLicensing to add or cancel a branch office location associated with the broker license.

Proper planning can make all the difference between a successful succession and a difficult one. Always seek guidance from your legal counsel, tax consultant, financial planner, and other professionals as applicable. ■



WHAT DO YOU KNOW?

A quiz on California Real Estate Law

(CONTINUED FROM PAGE 3)

1. While not expressly required, it is best to have a licensed individual present. An unlicensed person may assist licensees if they avoid any solicitation or negotiation with people who view the open house. An unlicensed assistant may place signs, greet the public, hand out preprinted materials provided by the licensee, or schedule appointments with the licensee. During the open house, only a licensee may show the property, discuss terms and conditions of a possible sale, discuss the features of the property, the location of schools or amenities, or engage in any other conduct which is used to induce the prospect into entering into a contract to purchase the property or retaining the agent for any licensed services. The principal must agree to have an unlicensed assistant hold the open house. Licensees should review their Errors and Omissions insurance coverage to determine if a claim would be covered for the actions of an unlicensed assistant.
2. No. As long as there is no additional information on the sign. Specifically, once a licensee puts his/her name or the brokerage name on a sign, a license number must be included. Pursuant to Section 2773 of the Regulations of the Real Estate Commissioner, no license identification number is required where a “for sale,” “for rent,” “for lease,” “open house,” or directional sign has no name, trademark, or other branding of a real estate licensee, or where the only licensee identified is a responsible broker as defined in Business and Professions Code Section 10015.4.
3. No. Licensees cannot discriminate on the basis of a protected class, including having children. Section 2780 of the Regulations of the Real Estate Commissioner outlines prohibited discrimination of a protected class.
4. Leaving a home unattended could result in theft or damage to the residence, creating liability on the part of the licensee for negligence. DRE strongly discourages a licensee from leaving an open house unattended. ■





With Experience Comes Wisdom – What Would You Tell Your Younger Self?



This past May, DRE hosted a forum at the California Association of REALTORS spring meeting in Sacramento. At the meeting, we asked the licensees in attendance what piece of advice they wish someone would have given them when they were starting their real estate career. Here's a sample of the sage advice they offered:

1. Realize that you cannot be expected to know everything. But you do need to know where to look and whom to ask.
2. Keep, maintain, and love on your database.
3. Hire a tax professional to run your books and review your profits and losses monthly.
4. Run your business like a business. Go to the office & listen to what other agents are doing.
5. Get a mentor. All professionals should have a great coach.
6. Listen to the experienced agents, not only for their horror stories but as they talk about how they solved problems that came up.
7. Sign up for more educational/training programs and learn about marketing, organization, and time management.
8. You don't have to be the #1 agent to be a great agent.
9. Stay current with laws and market trends.
10. Adopt high standards and best practices.
11. Embrace mistakes. Understand you are always learning.
12. You'll need to remember 43,560 (the number of square feet in an acre).
13. Follow the following five: niche, focus, discipline, patience, and consistency.
14. Buy as much real estate as you can, as fast as you can. Build passive income.
15. Be prepared for long periods with no income.
16. Do not give up... It will get better... It also will get worse... So, stick with it.
17. Save your money in the good years.
18. Do not take on your client's emotions. Remain a calm professional.
19. Arrive early, come prepared, stay late.
20. Get with a brand or broker that offers solid, regular training.

Thank you again to all of the industry professionals who contributed their insights and advice to this article. ■



Smokey Bear is within us all.

For wildfire prevention tips, visit
SmokeyBear.com



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Facebook <https://www.facebook.com/CaliforniaDepartmentOfRealEstate>
YouTube https://www.youtube.com/@CA_DRE/videos

We'd like to hear from you!



Email us at editor@dre.ca.gov

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